

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4323 of 1985

For Approval and Signature:

Hon'ble MR.JUSTICE R.K.ABICHANDANI

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
 2. To be referred to the Reporter or not?
 3. Whether Their Lordships wish to see the fair copy of the judgement?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge?
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DEVENDRA L KUBAWAT

Versus

THROUGH SARPANCH

Appearance:

MR MD RANA for Petitioner
MR SHIRISH JOSHI for Respondent No. 1 (absent)
SERVED for Respondent No. 2

CORAM : MR.JUSTICE R.K.ABICHANDANI

Date of decision: 20/12/96

ORAL JUDGEMENT

The petitioner challenges the order dated 27.7.1985 of the respondent Panchayat, terminating his services from 27th July, 1985 under the resolution No.3 passed on that day by the Panchayat on the ground that despite several warnings for carrying out the assigned works and duties, the petitioner was negligent and was irregular in doing the work.

The petition was admitted on 9.12.1985 but so far no affidavit-in-reply was filed by any of the respondents.

It is contended for the petitioner that no

hearing was given to the petitioner before making the order terminating his services from 27.7.1985 though the order clearly casts a stigma on the petitioner. It was also contended that no notice as required by Rule 33(1)(a) of the Bombay Civil Services Rules, was given to the petitioner before terminating his services. It was also contended that the petitioner was not given any retrenchment compensation while terminating his services and there was violation of the provisions of Section 25F of the Industrial Disputes Act, 1947.

From the extract of his service book which is at Annexure "A" to the petition, it has appeared that the petitioner was appointed as an Octroi Clerk on a temporary basis from 1.2.1983, on a fixed salary of Rs. 225/- per month. From the impugned order at Annexure "B" it becomes clear that the services of the petitioner were terminated on the ground that he was irregular and negligent in discharge of his duties. There is therefore, a clear stigma cast on the petitioner under the order of termination. It was therefore, necessary to give a hearing to the petitioner before terminating his services on the ground of irregularity and negligence. In absence of such hearing, the impugned order cannot be sustained.

It is not clear from the record as to what was the nature of the appointment of the petitioner and whether his appointment was limited to a particular period. It is also not clear as to how many days the petitioner had put in as Octroi Clerk. These would be the questions of facts which cannot be gone into by this Court in exercise of its writ powers and the petitioner ought to have approached an appropriate forum where he could raise these questions. The question whether he should be reinstated or not and would be given consequential benefits would obviously depend upon the nature of his employment, the days that he had worked, and whether he was gainfully employed after his termination. If the employment was for a particular period, then beyond that period he would not be entitled to any reinstatement. No relevant facts are placed on record and therefore, reinstatement of the petitioner cannot be directed at this stage and the petitioner may approach the concerned authority in this regard. The concerned authority will thereupon take an appropriate decision in the matter.

The impugned order at Annexure "B" is therefore, set aside and the respondents are directed to consider the question of reinstatement of the petitioner on the

footing as if the impugned order was not made and having regard to the other relevant factors such as the nature and tenure of his appointment, number of days that he may have worked etc. Such decision should be taken within six weeks from the date of the receipt of the writ of this Court. If any adverse order is made, it will be open for the petitioner to question the same in accordance with law. Rule is made absolute accordingly, with no order as to costs.
